

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

ESTATE OF MARIE CLARK, et al.,	:	CASE NO. 1:15-cv-512
	:	
Plaintiffs,	:	
	:	Judge Michael R. Barrett
vs.	:	
	:	
HAMILTON COUNTY, et al.,	:	
	:	
Defendants.	:	

ORDER

This matter is before the Court on the October 27, 2015 Report and Recommendation of the Magistrate Judge (Doc. 5), which recommends denying Plaintiffs' Ex Parte Motion for Order Directing U.S. Marshal's Service to Serve Summons and First Amended Complaint Upon the Defendants Pursuant to Rule 4(c)(3) of the Federal Rules of Civil Procedure (Doc. 3) because the support for the motion was an improper request to proceed *in forma pauperis* as co-administrators purportedly on behalf of the estate. On November 4, 2015, Plaintiffs filed a Notice Withdrawl of In Forma Pauperis Applications (Doc. 6) as well as Objections to the Report and Recommendation (Doc. 7) in which Plaintiffs request that service by a U.S. Marshal be granted as soon as possible given that they withdrew the *in forma pauperis* applications.

Federal Rule of Civil Procedure 4(c)(3) upon which Plaintiffs rely states:

At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The Court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916.

Plaintiffs' original motion sought service by a U.S. Marshal solely on the basis that such service is required when a plaintiff is authorized to proceed *in forma pauperis*. Given the Magistrate Judge's correct conclusion in the Report and Recommendation as well as the withdrawal of the *in forma pauperis* applications, the grounds upon which the request was based no longer exist. While the Court has the discretion to order service by the U.S. Marshal even when a plaintiff is not proceeding *in forma pauperis*, Plaintiffs have provided the Court with no explanation as to why it should do so in this case.

Accordingly, Plaintiffs' objections (Doc. 7) are **OVERRULED** and the conclusion of the Report and Recommendation (Doc. 5) is **ADOPTED** on different grounds. Specifically, Plaintiffs' Motion (Doc. 3) is **DENIED** on the grounds that the Court is not required to order service by the U.S. Marshal where, as here, Plaintiffs are not proceeding, and cannot proceed, *in forma pauperis* and no reasons have provided at this time that warrant Court's exercise of discretion to order such service.

IT IS SO ORDERED.

s/Michael R. Barrett
JUDGE MICHAEL R. BARRETT
UNITED STATES DISTRICT COURT